

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

Case No.	<u>EDCV 23-1255 PA (SPx)</u>	Date	<u>June 30, 2023</u>
Title	<u>Kim Dunn v. CVS Pharmacy, Inc., et al.</u>		

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

None

Attorneys Present for Defendants:

None

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court is a Notice of Removal filed by defendants CVS Pharmacy, Inc. and Garfield Beach CVS, LLC (collectively “CVS”). This is the second time that CVS has removed San Bernardino Superior Court Case No. CIVDS2022066 (“SB 2022066”) filed by plaintiff Kim Dunn (“Plaintiff”). CVS filed the first Notice of Removal on April 12, 2021. That action, Case No. EDCV 21-649 PA (SPx), was litigated in this Court until December 6, 2021, when the Court granted the parties Stipulation to Dismiss and issued an Order of Dismissal dismissing EDCV 21-649 without prejudice. On August 1, 2022, following this Court’s dismissal of EDCV 21-649 without prejudice, Plaintiff re-filed her action in Los Angeles Superior Court, Case No. 22STCV24757 (“LA 24757”).

However, according to the new Notice of Removal, on July 30, 2021, the San Bernardino Superior Court had dismissed SB 2022066 with prejudice after the case had been removed to this Court and while the San Bernardino Superior Court did not have jurisdiction over the action. On June 27, 2023, the San Bernardino Superior Court issued an Order vacating and setting aside its July 30, 2021 order dismissing SB 2022066 with prejudice as having been done in excess of the San Bernardino Superior Court’s jurisdiction. CVS then filed the new Notice of Removal in an effort to return SB 2022066 to this Court based on the Court’s diversity jurisdiction. See 28 U.S.C. § 1332.

While the Court understands why the San Bernardino Superior Court vacated and set aside its order dismissing SB 2022066 with prejudice, because it entered that order while the action was pending in this Court following the filing of the first Notice of Removal and the San Bernardino Superior Court therefore had no jurisdiction to dismiss the action with prejudice, and should have simply administratively closed SB 2022066 as a result of the filing of the Notice of Removal (assuming CVS properly notified the San Bernardino Superior Court of the removal of the action), the San Bernardino Superior Court’s June 27, 2023 Order does not appear to attempt to set aside this Court’s December 6, 2021 Order of Dismissal. Nor would the San Bernardino

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Superior Court have the authority to vacate this Court's Order. Plaintiff's case originally filed in San Bernardino Superior Court was dismissed by this Court without prejudice on December 6, 2021 pursuant to the parties' Stipulation. The December 6, 2021 Order remains the Order of this Court. That action was dismissed by this Court without prejudice and it remains dismissed without prejudice as a result of the December 6, 2021 Order. The new Notice of Removal does not relieve either party from this Court's December 6, 2021 dismissal without prejudice or in any manner re-start the litigation in this Court. Nor does this Court intend in any way to interfere with the action that was subsequently filed in Los Angeles Superior Court. Because this action was dismissed without prejudice on December 6, 2021, the Clerk is ordered to administratively close this new Case No. EDCV 23-1255 PA (SPx)

IT IS SO ORDERED.